

Title 19 – Environmental Protection

Chapter 2 – Clean Air Act

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Legislative History

Enacted:

Clean Air Act, Ord. 179 (9/30/03), BIA (10/7/03).

Repealed or Superseded:

Codifying Title 19 – Environmental Protection and Repealing and Superseding Ordinance Nos. 168, 90, Sections, 16-5.010 Through 16-5.020, 36, and Resolution 80-10-762, Ord. 177 (9/3/03).

Adopting and Enforcing Clean Air Standards, Ord. 36 (2/1/77), BIA (2/19/77).

19-02.010 Authority.

This Chapter is enacted pursuant to the authority found in Article VI, Section 1(a), 1(l), and 1(s) of the Constitution of the Swinomish Indian Tribal Community.

[History] Ord. 179 (9/30/03).

19-02.020 Presumption of Retention of Jurisdiction.

As an immutable principle of construction and interpretation of this Chapter, any reasonable doubt as to the applicability of any provision of this Chapter or the Regulations incorporated by reference herein shall be resolved in favor of the complete retention of tribal jurisdiction.

[History] Ord. 179 (9/30/03); Ord. 36 (2/1/77).

19-02.030 Definitions.

(A) For the purposes of this Chapter, unless explicitly stated otherwise, the following terms shall be defined as follows:

- (1) **“Burn Ban”** means a period of impaired air quality or heightened fire danger during which the Planning Department prohibits all outdoor burning, subject to the exceptions established in this Chapter.
- (2) **“Commission”** or **“Planning Commission”** means the Planning Commission of the Swinomish Indian Tribal Community or its designee.
- (3) **“NWAPA”** means the Northwest Air Pollution Authority, a state governmental agency established under the authority of Washington law to develop and enforce air quality standards in Northwest Washington.
- (4) **“Permitee”** means any person who holds a permit issued pursuant to the terms of this Chapter or any regulations promulgated hereunder.
- (5) **“Planning Department”** means the Office of Planning and Community Development of the Swinomish Indian Tribal Community.
- (6) **“Reservation”** means all lands and waters within the exterior boundaries of the Swinomish Indian Reservation.
- (7) **“Structure”** means anything that a person builds or places on the ground for human use or enjoyment that is made from inflammable materials.

(B) All other words and phrases shall have their customary and ordinary meanings.

[History] Ord. 179 (9/30/03); Ord. 177 (9/3/03).

Subchapter I – Operating Permits

19-02.040 Adoption of NWAPA Regulations.

- (A) The air quality standards and regulations of the NWAPA are hereby adopted and incorporated as tribal law, as if fully set out herein. These standards and regulations include those used to sample, quantify, limit, and otherwise determine whether a given source of pollution is in compliance with the air quality standards that are in effect as of the effective date of this Chapter, except as expressly excluded by Section 19-02.080 and Section 19-02.090(A).
- (B) A copy of the NWAPA standards and regulations shall be marked and designated as such, placed on file in the Planning Department, and made available for public inspection during business hours.

[History] Ord. 179 (9/30/03), Ord. 36 (2/1/77).

19-02.050 Operating Permits.

- (A) Any person or business operating machinery, equipment, or any other device that emits a statistically significant volume of air pollution shall obtain an operating permit from the Planning Department prior to operation.
- (B) The Planning Department shall maintain a list of the persons and businesses required to obtain a permit under Section 19-02.050(A) as of the effective date of this Chapter.
- (C) All persons and businesses that locate on the Reservation after the effective date of this Chapter shall obtain a permit before operating any machinery, equipment, or other device that emits a statistically significant volume of air pollution.
- (D) The Planning Department shall update the list required by Section 19-02.050(B) whenever it determines that a new person or business is required to obtain an operating permit under Section 19-02.050(C).
- (E) Operating permits shall be for a period of one (1) year and shall be renewable upon an application by the permittee to the Swinomish Planning Commission.
- (F) The Planning Department may waive the requirement to obtain an operating permit in Sections 19-02.050(A) and (C) upon a written showing that:
 - (1) The requirements would impose an undue hardship on the applicant;

- (2) Waiver of the requirements would not significantly affect the quality of the tribal airshed; and
- (3) Waiver of the requirements would be in the best interest of the Tribe.

[History] Ord. 179 (9/30/03), Ord. 36 (2/1/77).

19-02.060 Fee Schedule.

- (A) The Tribe shall charge a reasonable fee for issuing the operating permits required by Section 19-02.050 above.
- (B) The Planning Department shall publish the fees in a fee schedule, which shall be placed on file in the Planning Department and made available for public inspection.
- (C) From time to time, the Planning Department may change the fee schedule so long as the schedule is reasonable. The Planning Department shall place the amended fee schedule on file in the Planning Department and make it available for public inspection.

[History] Ord. 179 (9/30/03).

19-02.070 Revocation of Permits.

- (A) The Planning Department shall revoke the operating permit of any person subject to the terms of this Chapter who fails to comply with the terms of this Chapter, any rules or regulations promulgated hereunder, or the terms of his or her operating permit.
- (B) The Planning Department may permit a person or business to continue operating in non-compliance with this Chapter, any rules or regulations promulgated hereunder, or the terms of his or her operating permit for a reasonable period of time to prevent unreasonable hardship while the person or business comes into compliance with the terms of this Chapter, any rules or regulations promulgated hereunder, or the terms of his or her operating permit.
- (C) The Planning Department shall not revoke an operating permit before giving the person or business a fair hearing before the Swinomish Planning Commission.

[History] Ord. 179 (9/30/03), Ord. 36 (2/1/77).

19-02.080 Due Process and Appellate Procedure.

Due process requirements and appellate procedure as provided in this Code, especially Chapter 3-02, Rules of Civil Procedure, and Chapter 3-04, Rules of Appellate Procedure,

shall govern in all instances, cases, or controversies arising under this Chapter. Due Process and appellate procedure provisions in the NWAPA regulations are specifically excluded and not incorporated by reference in this Chapter.

[History] Ord. 179 (9/30/03), Ord. 36 (2/1/77).

19-02.090 Enforcement.

- (A) Authority to implement and enforce the NWAPA regulations referred to in Section 19-02.040(A) above within the Reservation remains entirely with the Planning Commission and the Senate. Provisions within the NWAPA Regulations regarding alternative enforcement by State officials or by any other official are specifically excluded and not incorporated by reference in this Chapter.
- (B) Violations of this Chapter shall be enforced in Tribal Court to the maximum extent permitted by law.

[History] Ord. 179 (9/30/03), Ord. 36 (2/1/77).

19-02.100 Penalties.

- (A) Violations of this Chapter shall be a civil offense punishable by the following:
 - (1) A fine not to exceed \$1000 per offense, per day;
 - (2) Costs of enforcement, including court costs;
 - (3) Costs of remediation; and
 - (4) A sum of money equal in value to the benefit the violator obtained by violating the terms of this Chapter.
- (B) Violations of this Chapter are subject to an injunction from tribal court.

[History] Ord. 179 (9/30/03), Ord. 36 (2/1/77).

19-02.110 Civil Action.

Any person injured by a violation of any provision of this Chapter shall have a cause of action for damages in Tribal Court.

[History] Ord. 179 (9/30/03); Ord. 36 (2/1/77).

Subchapter II – Burn Permits

19-02.120 Outdoor Burn Permits Required.

- (A) Any person who lights or maintains an outdoor fire with a maximum diameter greater than four (4) feet within the exterior boundaries of the Swinomish Indian Reservation shall first obtain an outdoor burn permit from the Planning Department.
- (B) The requirement to obtain an outdoor burn permit pursuant to Section 19-02.120(A) shall not apply to:
 - (1) A fire lit and maintained for tribally recognized spiritual or cultural purposes; or
 - (2) Reasonably sized outdoor barbeque pits used to cook food or other reasonably contained outdoor fires used to cook food.

[History] Ord. 179 (9/30/03).

19-02.130 Fees.

- (A) The Planning Department may charge applicants a reasonable fee for an outdoor burn permit.
- (B) The Planning Department shall publish the fee for an outdoor burn permit on a fee schedule marked and designated as such and placed on file in the Planning Department and made available for public inspection.

[History] Ord. 179 (9/30/03)).

19-02.140 Prohibited Materials.

- (A) The following material shall not be burned outdoors: garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper or cardboard (other than what is necessary to start a fire), treated wood, construction/demolition debris, metal, or any substance other than natural vegetation.
- (B) No outdoor fire may contain material that has been hauled from another site, except as specifically allowed by an outdoor burn permit issued by the Planning Department.
- (C) Fire fighting instruction fires and other outdoor fires necessary to protect public health and safety may burn a limited quantity of prohibited materials if

specifically allowed by an outdoor burn permit issued by the Planning Department.

[History] Ord. 179 (9/30/03).

19-02.150 Fire Safety.

- (A) No person shall light or maintain a fire unless he or she has placed equipment near the fire that is capable of extinguishing the fire. The equipment and a person who knows how to use it must remain within reasonable proximity to the fire at all times.
- (B) No permittee shall leave a fire unattended until it is fully extinguished.
- (C) No fires are permitted within one hundred (100) feet of a structure.

[History] Ord. 179 (9/30/03).

19-02.160 Burn Ban.

- (A) During episodes or periods of impaired air quality or high fire danger, the Planning Department may declare a “burn ban.”
- (B) No person shall light or maintain an outdoor fire during a burn ban. In the event that a fire has been lit prior to the declaration of a burn ban, the permittee for an outdoor fire must extinguish the fire promptly upon the Planning Department declaring a burn ban.
- (C) The Planning Department shall provide notice of a burn ban by placing a sign by the side of each road that provides access to the Reservation and by posting written notice in appropriate locations.
- (D) The following exceptions to Section 19-02.160(B) shall apply:
 - (1) During a burn ban, the Planning Department may allow continued burning under an existing permit only if it determines that continued burning under the existing permit is safe and appropriate and so informs the permittee in writing.
 - (2) During a burn ban, the Planning Department may allow outdoor fires for cooking or other recreational use in approved fire rings, or other reasonably contained fires, provided that the burning is safe and appropriate under the circumstances.
 - (3) During a burn ban, the Planning Department may allow outdoor burning for spiritual and cultural purposes if it determines that the outdoor burning is safe and appropriate.

[History] Ord. 179 (9/30/03).

19-02.170 Carbon Monoxide or PM-10.

No person shall light or maintain an outdoor fire within the exterior boundaries of the Reservation that exceeds tribal ambient air quality standards for carbon monoxide or PM-10 as established in Section 19-02.040.

[History] Ord. 179 (9/30/03).

19-02.180 Nuisance.

- (A) Under no circumstances shall a person shall light or maintain an outdoor fire that causes an emission of smoke or any other air contaminant that is detrimental to the health, safety, or welfare of any person, that causes damage to property or business, or that causes a nuisance.
- (B) Section 19-02.170(A) applies to all persons or businesses regardless of whether they are required to obtain an outdoor burn permit issued pursuant to the terms of this Chapter.

[History] Ord. 179 (9/30/03).

19-02.190 Slash Burns.

Outdoor burn permits for purposes of land clearing and slash disposal shall meet additional requirements for the protection of air quality, public health and safety. A list of standard requirements for such permits shall be available in the Planning Department and may be modified from time to time.

[History] Ord. 179 (9/30/03).

Subchapter III – Repealer and Severability

19-02.200 Repealer.

This Chapter repeals and supersedes Ordinance 36.

[History] Ord. 179 (9/30/03).

19-02. 210 Severability.

The provisions of this Chapter are severable. If a court of competent jurisdiction invalidates any provision of this Chapter, the remaining provisions shall remain in effect.

[History] Ord. 179 (9/30/03), Ord. 36 (2/1/77).

19-02.220 Effective Date.

This Chapter shall become effective immediately upon enactment.

[History] Ord. 179 (9/30/03).